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JAMES J MURPHY
5400 RENAISSANCE TOWER
1201 ELM STREET
DALLAS TX 75270-2199

EXAMINER	
MILLS, I	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No.

Application Number: 08/890643
Filing Date: 07/09/97
Appellant(s): I. Holland et al.

For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed August 29, 2000.

A statement identifying the real party in interest is contained in the brief.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

The statement of the status of the claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The appellant's statement of the summary of the invention is in dispute. The examiner submits that the invention is as stated in the abstract of the application and in the claims as follows:

THE ABSTRACT

A converter program creates a simulatetd executable code so that the operating system loader believes that a read only file of data consists of executable code and thereby memory maps th read only file inot virtual memory.

THE CLAIM

1. A method comprising the steps of:

converting a read only file into an executable file and

memory mapping the converted file into memory.

The applicant's statement of the invention is beyond the scope of the claims and appears to elaborate on features of the specification which are not directly at issue in this case.

The applicant's statement of the issue is correct.

The applicant's grouping of the claims obviates the requirements of 37 CFR 1.192 (c)(7).

The copy of the appealed claims contained in the Appendix to the brief is correct.

The following is a listing of the prior art of record relied upon in the rejection of the claims under appeal.

U.S. Patent No. 5,301,302 by Blackard et al.

No new prior art has been applied in this examiner's answer.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by the prior art U.S. Patent 5,301,302 to Blackard et al.

The applicant's invention of simulating executable code and then memory mapping data into virtual memory is taught by the prior art reference as follows:

. In claim 1, the prior art reference teaches the method of the claimed invention. The step of converting a read only file into an executable file is taught by the reference as the simulator copies data and instructions from Read Only Storage (ROS) into the operating system's shared memory segment.(See Col. 8 line 21 et seq.) The further step of memory mapping the converted file into memory is taught by the reference as the memory mapping whereby addresses of a one segment of memory are mapped into a second segment of memory. (See Col. 16 line 21 et seq.)

Independent claims 7 and 13 recite essentially the same features as claim one and are rejected in the analysis above and are rejected on that basis.

The applicant does not appear to argue the rejection of claims 2-3, 8-9, and 14-15 and has grouped these claims as standing or falling with the rejection of claims 1, 7, and 13.

With respect to claims 4, 10, and 16, the applicant restates the examiner's rejection of claim 4 that the additonal feature of a shared library file is taught by the reference as "shared memory segments taught on col. 16 line 21." The applicant argues that shared memory taught by the reference is different from shared library set forth in the claim. The applicant argues that a shared library is a collection of routines, but as set forth in the office action, shared memory may also be a collection of routines or data or other structures which may be shared by the processor.

The applicant grouped claims 10 and 16 with claim 4 so that the rejection of these claims stands or falls with the rejection of claim 4, and the examiner reaffirms that these claims set forth essentially the same features as claim 4 which are shown by the reference..

With respect to claim 5, the applicant adds the single feature that the read only file may be a database file. The prior art reference shows that the read only file is copied from ROM and as broadly claimed by the applicant without anything in addition, it is well known that file may be characterized as a database or other data structure. The applicant asserts that BIOS is not a database but the applicant's claim as broadly read does not attach any patentable significance to the word database that would prevent a BIOS from being a database structure.

The applicant has grouped claims 11 and 17 with claim 5 so that the rejection of these claims stands or falls with the rejection of claim 5 , and the examiner reaffirms that these claims set forth essentially the same features as claim 5 which are shown by the reference.

With respect to claim 6, which adds the feature of wrapping the read only file with executable code, the prior art reference teaches instruction address translation on Col 13 line 22 et seq which performs essentially the same function as making the read only code into executable code.

The applicant has grouped claims 12 and 18 with claim 6 so that the rejection of these claims stands or falls with the rejection of claim 6, and the examiner reaffirms that these claims set forth essentially the same features as claim 6 which are shown by the reference.

With respect to claim 19 and 20, claims 19 adds the limitation that the read only file is an image file and claim 20 adds the feature that the read only file is an audio file. The examiner reaffirms that the type of data and type of file is inherent in the teaching of the reference and the data could be either image or audio. The examiner asserts that the type of data stored whether image or audio which does not add anything to the function or structure of the invention is not a patentable distinction.

Claims 21-23 are rejected in the analysis above as merely adding headers which are well known in the art and not significant in the design and operation of the invention.

Claims 24-26 are rejected in the analysis above as merely adding a protected mode for the processor which as broadly claimed is shown by the reference which teaches in the Abstract

section that the simulator takes additional steps to guarantee the correct execution of modified instructions thus protecting the processor.

With respect to claim 27, the features of this claim are a restatement of the claimed elements already rejected. The applicant argues the patentability of the feature of a "shared library" as distinguished from a "shared memory.".

This Examiner's answer has not added any new ground of rejection.

The applicant's arguments have been considered but have not been found persuasive as shown in the arguments of the examiner above. In general, the applicant is seen to be arguing details of the specification over the claims at issue in this case which as broadly set forth are anticipated by the prior art.

To avoid dismissal of the appeal, Appellant is required to comply with the provisions of 37 CFR 1.192 c, within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the office action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John Gladstone Mills III

December 4, 2000

THOMAS BLACK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100